

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RUDY GRAJEDA,	:	
Plaintiff,	:	
	:	
-vs-	:	Civil No. 3:99cv1939(PCD)
	:	
AEROIL PRODUCTS CO., INC.,	:	
BRIGGS ASSOCIATES, and	:	
CONNECTICUT VALLEY HOSPITAL,	:	
Defendants.	:	

**RULING ON MOTION TO RECONSIDER ORDER PRECLUDING EXPERT
TESTIMONY/MOTION FOR LEAVE TO FILE SUMMARY JUDGMENT MOTION**

Plaintiff, Rudy Grajeda, moves for reconsideration of the order barring expert testimony.

Defendant, Aeroil Products Co., moves for leave to file a motion for summary judgment. For the reasons set forth herein, plaintiff's motion for reconsideration is granted and the order barring expert testimony is vacated and defendant's motion for leave to file a motion for summary judgment is granted.

I. BACKGROUND

On July 26, 2001, defendant moved to preclude expert testimony, claiming that no disclosure of expert had been received pursuant to FED. R. CIV. P. 26(a)(2) . On August 22, 2001, the motion was granted absent objection from defendant pursuant to D. CONN. L. CIV. R. 9(a). Defendant's motion for reconsideration of the order was timely filed on August 28, 2001.

II. RULING ON PLAINTIFF'S MOTION FOR RECONSIDERATION

Plaintiff contends that it served its disclosure of expert on defendant on March 24, 2001, prior to the March 31, 2001 deadline. Plaintiff further contends that it did not file a memorandum in opposition to defendant's motion because it understood that defendant intended to withdraw the

motion. Plaintiff indicates that it first received the disclosure of expert, dated March 8, 2001, by facsimile on August 22, 2001.

A motion for reconsideration may be granted based on “[1] an intervening change of controlling law, [2] the availability of new evidence, or [3] the need to correct a clear error or prevent manifest injustice.” *Virgin Atl. Airways, Ltd. v. Nat’l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir.), *cert. denied*, 506 U.S. 820, 113 S. Ct. 67, 121 L. Ed. 2d 34 (1992). Plaintiff failed to file opposition to defendant’s motion to preclude expert testimony on a good faith belief that the same would be withdrawn. This preclusion, as plaintiff argues, “is tantamount to dismissing this product[] liability case” and thus would work a “manifest injustice,” *see id.* The merits of plaintiff’s opposition to defendant’s motion to exclude expert testimony will therefore be considered.

In support of its motion, plaintiff provides (1) the affidavit of its counsel, John Durst, who states that a document entitled “Expert Disclosure” was timely served on all parties; and (2) a copy of the document entitled “Expert Disclosure” disclosing Igor Paul as an expert witness dated March 8, 2001. Defendant argues that it first received the document on August 22, 2001, after the order precluding expert testimony issued, and provides affidavits stating that no disclosure of expert was received before August 22, 2001.

Evidence of timely service adduced by plaintiff suffices to establish compliance with the disclosure deadline of March 24, 2001. Defendant’s motion to exclude expert testimony is therefore denied.

III. RULING ON DEFENDANT'S MOTION FOR LEAVE TO FILE MOTION FOR SUMMARY JUDGMENT

Defendant moves, in violation of the Supplemental Order by filing the motion directly, for leave to file a motion for summary judgment after the deadline date for dispositive motions. In support of its motion, defendant states that the delay was the result of plaintiff's motion for reconsideration on the order barring expert testimony. Defendant's noncompliance with the Supplemental Order is waived. Defendant's motion for leave to file a motion for summary judgment is granted, subject to compliance with the Supplemental Order. Any such motion shall be served by November 5, 2001, to be filed with any opposition on or before November 15, 2001.

IV. CONCLUSION

Plaintiff's motion for reconsideration (Doc. 67) is **granted**, the August 22, 2001 order precluding expert testimony is **vacated** and defendant's motion to preclude expert testimony (Doc. 58) is **denied**. Defendant's motion for leave to file a motion for summary judgment (Doc. ____) is **granted**.

SO ORDERED.

Dated at New Haven, Connecticut, October ____, 2001.

Peter C. Dorsey
Senior United States District Judge